

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| PhoneCo, LP |) | File No. EB-06-TC-3424 |
| |) | NAL/Acct. No. 200732170046 |
| Apparent Liability for Forfeiture |) | FRN: 0008843955 |

FORFEITURE ORDER

Adopted: August 10, 2007**Released: August 10, 2007**

By the Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) against PhoneCo, LP ("PhoneCo" or "Company"). PhoneCo violated a Commission order by failing to respond to the directive of the Enforcement Bureau ("Bureau") to provide certain information and documents. PhoneCo acted in willful or repeated violation of Section 503(b) of the Communications Act of 1934, as amended, ("Act")¹ and Section 1.80 of the Commission's rules ("Rules").²

2. On March 30, 2007, the Bureau issued to PhoneCo a *Notice of Apparent Liability for Forfeiture* ("NAL")³ proposing a forfeiture in the amount of four thousand dollars (\$4,000) based on PhoneCo's apparent violation of the Bureau's directive. The *NAL* gave PhoneCo the option of paying the proposed forfeiture or of filing a response to the *NAL* stating why the proposed forfeiture should either not be assessed or should be reduced. The *NAL* was sent by certified mail to PhoneCo's last known address. PhoneCo filed a response to the *NAL* on June 27, 2007.⁴ Based on the information contained therein, we affirm this forfeiture.

II. BACKGROUND

3. The Bureau has been investigating the adequacy of procedures implemented by telecommunications carriers to ensure confidentiality of their subscribers' CPNI, based on concerns regarding the apparent availability to third parties of sensitive, personal subscriber information. For example, some companies, known as "data brokers," have advertised the availability of records of

¹ 47 U.S.C. § 503(b).

² 47 C.F.R. § 1.80.

³ *PhoneCo LP*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 6318 (2007) ("*NAL*").

⁴ See Letter from Steven R. Shaver, Counsel for PhoneCo, LP, to Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, (filed June 27, 2007) ("*NAL Response*").

wireless subscribers' incoming and outgoing telephone calls for a fee.⁵ Data brokers have also advertised the availability of call information that relates to certain landline toll calls.⁶

4. As part of our inquiry into these issues, the Bureau sent Letters of Inquiry ("LOIs") to several carriers, including PhoneCo, directing them to submit their certifications for the previous five (5) years prepared in compliance with section 64.2009(e) of the Commission's rules.⁷ PhoneCo did not respond to the LOI. Accordingly, on March 30, 2007, the Bureau issued the *NAL* to PhoneCo for its failure to respond to the directive of the Bureau.

5. On June 27, 2007, PhoneCo submitted a response to the *NAL*, which explains the Company's reasons for failing to respond to the LOI.⁸ PhoneCo states that it did realize that it had failed to respond to the Bureau's request because it was in the process of changing legal counsel.⁹ Specifically, it states that, "[d]ue to the transition, inadvertence and/or mistake of the [former] counsel in Austin, who handled the CNPI [sic] filings, it was not realized that PhoneCo, L.P.'s [LOI response] had not been filed"¹⁰ PhoneCo requests that the *NAL* be reduced or canceled, because the failure to timely respond was the result of a mistake, and not willful or intentional behavior.¹¹

III. DISCUSSION

6. Section 503(b) of the Communications Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.¹² The Commission may assess this penalty if it determines that the carrier's noncompliance is "willful or repeated."¹³ For a violation to be willful, it need not be intentional.¹⁴ In exercising our forfeiture authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior

⁵ See, e.g. <http://www.epic.org/privacy/iei/>.

⁶ See *id.*

⁷ See LOI from Marcy Greene, Deputy Division Chief, Telecommunications Division, Enforcement Bureau, to Peni Barfield, CEO, PhoneCo, LP (sent December 26, 2006) ("LOI").

⁸ See *NAL* Response at 1-2.

⁹ *Id.* at 1.

¹⁰ *Id.* PhoneCo explains that both of its corporate sisters, Accutel of Texas and Revolution Communications Ltd., timely filed their CPNI certifications. *Id.*

¹¹ *Id.* at 2.

¹² Section 503(b)(2)(B) provides for forfeitures against common carriers of up to \$130,000 for each violation or each day of a continuing violation up to a maximum of \$1,325,000 for each continuing violation. 47 U.S.C. § 503(b)(2)(B). See *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (increasing maximum forfeiture amounts to account for inflation).

¹³ 47 U.S.C. § 503(b)(1)(B). The Commission has authority under this section of the Act to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act. The section provides that the Commission must assess such penalties through the use of a written notice of apparent liability or notice of opportunity for hearing. See 47 U.S.C. § 503(b)(4)(A). Here, as described above, AT&T's actions were willful as it apparently failed to prepare the required compliance certification.

¹⁴ *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

offenses, ability to pay, and such other matters as justice may require.”¹⁵ In addition, the Commission has established guidelines for forfeiture amounts and, where there is no specific base amount for a violation, retained discretion to set an amount on a case-by-case basis.¹⁶

7. The Commission’s forfeiture guidelines do not address the specific violation at issue in this proceeding. In determining the proper forfeiture amount in this case, however, we are guided by the principle that there may be no more important obligation on a carrier’s part than protection of its subscribers’ proprietary information. Consumers are increasingly concerned about the security of their sensitive, personal data that they must entrust to their various service providers, whether they are financial institutions or telephone companies. Given the increasing concern about the security of this data, and evidence that the data appears to be widely available to third parties, we must take aggressive, substantial steps to ensure that carriers implement necessary and adequate measures to protect their subscribers’ CPNI as required by the Commission’s existing CPNI rules.

8. In this case, PhoneCo argues that it had no knowledge of its failure to respond to the Bureau’s LOI. It asserts that it relied on, and evidently believed, that its (then) legal counsel, made this filing. However, said counsel did not file a response and did not inform the Company of this failure. PhoneCo also explains that these events occurred during its transition to new legal counsel. Thus, the Company asserts that the violation was due to mistake, and therefore, not a willful or intentional act. We find no merit in this explanation. Allowing a licensee to violate our rules because of a misplaced trust in the competency of legal counsel or because of the mismanagement of its affairs during a period of transition does not serve the public interest.¹⁷ Thus, after fully considering the facts and circumstances described herein, we believe the forfeiture of \$4,000 is warranted in this case.¹⁸

9. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,¹⁹ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²⁰ PhoneCo, LP **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 503 of the Act and Section 1.80 of the Rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²¹

10. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communication Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, Attn.: FCC Module Supervisor. Payment by wire transfer

¹⁵ See 47 U.S.C. § 503(b)(2)(D); see also *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”); *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁶ *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, ¶ 22.

¹⁷ See, e.g., *In the matter of Liability of Triad Broadcasting Company, Inc., Licensee of Radio Station WSEZ (FM) Winston-Salem, North Carolina for Forfeiture*, Memorandum Opinion and Order, 96 FCC 2d 1235 (1984) (citations omitted).

¹⁸ 47 U.S.C. § 503(b)(4)(A).

¹⁹ 47 U.S.C. § 503(b).

²⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²¹ 47 U.S.C. § 504(a).

may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. Please include your NAL/Acct. No. with your wire transfer remittance. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.

5. **IT IS FURTHER ORDERED** that a copy of the Forfeiture Order shall be sent by first class mail and certified mail return requested to PhoneCo, LP, at its last known address, 7900 John Carpenter Freeway, Dallas, Texas 75242.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith
Chief, Enforcement Bureau